

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MIGUEL GUERRERO, :
Plaintiff :
: :
: : **No. 1:22-cv-01631**
v. :
: :
: : **(Judge Rambo)**
UNITED STATES OF AMERICA, :
Defendant :

ORDER

AND NOW, on this 25th day of January 2023, upon consideration of pro se Plaintiff Miguel Guerrero (“Plaintiff”)’s complaint (Doc. No. 1), motion for leave to proceed in forma pauperis (Doc. No. 4), and prisoner trust fund account statement (Doc. No. 5), and in accordance with the accompanying Memorandum, **IT IS**

ORDERED THAT:

1. Plaintiff’s motion for leave to proceed in forma pauperis (Doc. No. 4) is **GRANTED**, and his complaint (Doc. No. 1) is **DEEMED** filed;
2. Plaintiff shall pay the full filing fee of \$350.00 based on the financial information provided in the application to proceed in forma pauperis. The full filing fee shall be paid regardless of the outcome of the litigation;
3. Pursuant to 28 U.S.C. § 1915(b)(1) and (2), the Superintendent/Warden or other appropriate official at Plaintiff’s place of confinement is directed to deduct an initial partial filing fee of 20% of the greater of:
 - a. The average monthly deposits in the inmate’s prison account for the past six months, or
 - b. The average monthly balance in the inmate’s prison account for the past six months.

The initial partial filing fee shall be forwarded to the Clerk of the United States District Court for the Middle District of Pennsylvania, P.O. Box 1148, Scranton, Pennsylvania, 18501-1148, to be credited to the above-captioned docket number. In each succeeding month, when the amount in Plaintiff's inmate trust fund account exceeds \$10.00, the Superintendent/Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Plaintiff's inmate trust fund account until the fees are paid. Each payment shall reference the above-captioned docket number;

4. The Clerk of Court is directed to **SEND** a copy of this Order to the Superintendent/Warden of the institution where Plaintiff is presently confined;
5. Plaintiff's complaint is **DISMISSED** for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) as follows:
 - a. Plaintiff's claim, which has been asserted pursuant to the Federal Tort Claims Act ("FTCA"), is dismissed without leave to amend;
 - b. Plaintiff's complaint is dismissed without prejudice to Plaintiff's right to assert a claim for compensation benefits under the Inmate Accident Compensation Act; and
6. The Clerk of Court is directed to **CLOSE** this case.

s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge